S.B. CIVIL MISC. APPEAL NO.1225/2006
(Smt.Gumti & ors. Vs. Nehru Singh & ors.**.)**

DATED : 29.08.2006

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.Parikshit Nayak for the appellants.

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By way of this appeal against the award dated 05.02.2005 made by the Motor Accidents Claims Tribunal, Banswara in Claim Case No.39/2002 the claimant-appellants seek enhancement over the compensation amount of Rs.3,20,500/- awarded by the Tribunal on account of accidental death of Shri Vishram @ Bhavji, husband of the appellant No. 1, father of the appellants Nos. 2 to 5 and son of the appellant No. 6.

On 20.11.2001 at about 07.30 a.m. the deceased Vishram @ Bhavji, about 40 years in age, while traveling in a mini-bus bearing registration number RJ 03 P 803, going from Bhilkuwa to Khundani, fell out of the vehicle on sudden application of breaks; and died while undergoing treatment.

The present appellants claimed compensation in the sum of Rs. 19.60 lacs on account of death of Shri Vishram @ Bhavji stating his earning while working as a mason at Rs. 100/- per day and another Rs. 2,000/- per month from

agricultural work and total dependency of the claimants on him.

The learned Judge of the Tribunal found the accident and resultant death of the victim to have occurred for rash and negligent driving of the aforesaid bus bearing registration number RJ 03 P 803 and held the respondents liable for compensation. While taking up quantification of compensation, the learned Judge observed that no evidence was adduced for the earnings of the deceased as a mason but looking to the fact that wife, four children and mother were dependant upon him, considered it appropriate to estimate his earnings at Rs. 2,100/- per month as a labourer. However, the learned Judge deducted only 20% on the personal expenditure of the deceased and took the loss of dependency at Rs. 1,680/- per month leading to a multiplicand of Rs. 20,160/- per annum; and looking to the age of the deceased at 40 years, capitalized by a multiplier of 15 and calculated pecuniary loss at Rs.3,02,400/-, rounded up to Rs. 3,02,500/-. The learned Judge further allowed Rs.3,000/- spent on treatment and Rs. 15,000/- towards non-pecuniary loss. In this manner the Tribunal has made the award in the sum of Rs.3,20,500/- in favour of the claimant-appellants and has allowed interest at the rate of 6% per annum from the date of filing of the claim application.

Learned counsel appearing for the appellants has contended that the Tribunal has erred in its calculation of pecuniary loss where the income of the deceased has been taken only at Rs. 2,100/- though he was working as a mason and was earning by other job works too; that the multiplier of 15 also remains inadequate and reasonable amount towards non-pecuniary loss has also not been awarded and, therefore, the amount awarded by the Tribunal deserves suitable enhancement. Learned counsel also submitted that the Tribunal has erred in awarding interest only at the rate of 6% per annum.

Having considered the submissions made by the learned counsel for the appellants and having examined the considerations adopted by the Tribunal and the award in its totality this Court is satisfied that this appeal remains bereft of substance and deserves to be dismissed.

When no definite proof of income has been adduced, the Tribunal cannot be said to have erred in taking a reasonable estimate of earnings of the deceased at Rs. 2,100/- per month. Further, the Tribunal seems to have adopted unit method while calculating the loss of contribution in view of six number of dependents and has, therefore, deducted only 20% for the personal expenditure of the deceased to take the loss of contribution at Rs. 1,680/- per

month. In view of the age of the deceased at 40 years, the Tribunal has applied the multiplier of 15 that too cannot be said to be inappropriate. The ultimate figure of pecuniary loss assessed by the Tribunal at Rs. 3,02,500/- stand definitely on higher side for the purpose of a just compensation in the fact situation of the present case. Non-pecuniary loss has of course been awarded a bit on the lower side but in view of the higher amount allowed for pecuniary loss, the ultimate award made by the Tribunal cannot be said to be too low or inadequate so as to warrant interference by the appellate court. In the totality of circumstances, the rate of interest at 6% per annum in the award made in the year 2005 cannot be said to be abnormally low or inappropriate.

The upshot of the discussion aforesaid is that the amount awarded by the Tribunal remains not lesser than a just compensation in this case and there is no scope for upward revision.

In this view of the matter, there appears no reasonable ground to admit this appeal and the same is, therefore, dismissed summarily.

[DINESH MAHESHWARI], J.

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